

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-019658

FILED: _____

FRED KRUGER

ANDREW M HULL

v.

CHAUNDRA LORIAN

CHAUNDRA LORIAN
19301 W MELVIN
BUCKEYE AZ 85326-0000

BUCKEYE JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

Fred Krueger, Appellee, the Personal Representative for the estate of Evelyn Krueger (deceased) authorized a 30-day Notice to Vacate to the Appellant, Chaundra Lorian, demanding that Appellant vacate the home she occupied by September 30, 2001. Appellee filed a forcible detainer action in Buckeye Justice Court in October 2001, and on October 15, 2001, a trial was conducted on the matter. At trial, Appellee established that he

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-019658

was the representative of the owner of the property in question, that he was the Personal Representative for the estate of Evelyn Krueger, that there was an oral month-to-month rental agreement between Appellant and Evelyn Krueger (deceased), and showed proof that a 30-day Notice to Vacate was given to Appellee.

A careful review of the record discloses no evidence that Appellant's name was on the Contract for Sale of the property in question, nor is there evidence that Appellant paid a down payment and made regular mortgage payments on the property. These issues concern the sufficiency of evidence presented to the lower court. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.³

An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in *State v. Tison*⁶ that "substantial evidence" means:

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

⁵ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-019658

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

Appellant argues that the lower court should have heard her on the issue of equity during the forcible detainer trial. As a matter of law, the only issue that can be raised at a forcible detainer trial is the "right of actual possession, and the merits of title shall not be inquired into."⁸ Even the equitable defense of estoppel, based on improvements a defendant makes on property, can not be asserted in a forcible detainer action.⁹ This court finds that the trial court's decision not to hear Appellee on the issue of equity was proper.

IT IS THEREFORE ORDERED affirming the judgment in this matter.

IT IS FURTHER ORDERED remanding this case back for all future proceedings to the Buckeye Justice Court.

Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ Supra.

⁷ Id. at 553, 633 P.2d at 362.

⁸ A.R.S. §12-1177(a); See Curtis v. Morris, 184 Ariz. 393, 909 P.2d 460 (App. 1995); See also, Gangadean v. Erickson, 17 Ariz.App. 131, 495 P.2d 1338. (App. 1972).

⁹ Fenter v. Homestead Development & Trust Co., 3 Ariz.App. 248, 413 P.2d 579 (App. 1966).